

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 24th Floor
San Francisco, California 94105**

INITIAL STATEMENT OF REASONS

**Repeal of Disability Income Insurance Benefit Reduction Regulations Article 2.2
November 4, 2008
REG-2008-00033**

INTRODUCTION

California Insurance Commissioner Steve Poizner proposes the repeal of California Code of Regulations (“CCR”), Title 10, Chapter 5, Subchapter 2 Policy Forms and Other Documents, titled “Article 2.2. Limits on Benefit Reductions in Group Disability Income Insurance Policies” Sections 2232.45.1 (Authority and Purpose), 2232.45.2 (Benefit Reductions Shall Not Be Based on Involuntary Retirement), 2232.45.3 (Benefit Reductions Shall Not Be Based on Estimated Worker’s Compensation Temporary Disability Benefits Not Actually Received by the Insured), 2232.45.4 (Benefit Reductions Shall Not Be Based on Worker’s Compensation Permanent Disability), and 2232.45.5 (Benefit Reductions Based on Earnings Received for Work Performed While Disabled).

Commissioner Poizner proposes to repeal Title 10, Chapter 5, Subchapter 2, Article 2.2 Limits on Benefit Reductions in Disability Income Insurance Policies, pursuant to the authority set forth below:

Section 2232.45.1: Authority cited: Section 790.10, Insurance Code; *CalFarm Ins. Co. v. Deukmejian*, (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 790.02, 790.03, Insurance Code.

Section 2232.45.2: Authority cited: Section 790.10, Insurance Code; *CalFarm Ins. Co. v. Deukmejian*, (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 790.02, 790.03, Insurance Code; *Kalvinskas v. California Institute of Technology* (9th Cir. 1996) 96 F.3d 1305; *Gruenberg v. Aetna Insurance Company* (1973) 9 Cal.3d 566; *Smith v. Alum Rock Union Elementary School District* (1992) 6 Cal. App.4th 1651.

Section 2232.45.3: Authority cited: Section 790.10, Insurance Code; *CalFarm Ins. Co. v. Deukmejian*, (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 790.02, 790.03, Insurance Code; *Silberg v. Cal. Life Ins. Co.* (1974) 11 Cal. 3d 452.

Section 2232.45.4: Authority cited: Section 790.10, Insurance Code; *CalFarm Ins. Co. v. Deukmejian*, (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 790.02, 790.03, Insurance Code; *Erreca v. Western States Life Insurance Co.* (1942) 19 Cal.2d 388; *Russell v. Bankers Life Co.* (1975) 46 Cal. App.3d 405; *Canova v. N.L.R.B.* (1983) 708 F.2d 1498.

Section 2232.45.5: Authority cited: Section 790.10, Insurance Code; *CalFarm Ins. Co. v. Deukmejian*, (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 790.02, 790.03, Insurance Code; *Gruenberg v. Aetna Insurance Company* (1973) 9 Cal.3d 566.

SPECIFIC PURPOSE AND REASONABLE NECESSITY FOR REGULATIONS:

The specific purpose of each regulation and the rationale for the Commissioner's determination that each regulation is reasonably necessary to carry out the purpose for which it is proposed is set forth below.

Repeal of Title 10, Chapter 5, Subchapter 2, Article 2.2

California Code of Regulations Title 10, Chapter 5, Subchapter 2, titled "Policy Forms and Other Documents," contains regulations which govern the filing and contents of certain forms required to be filed with the Department of Insurance. Article 2.2., which was adopted in May of 2008, is entitled "Limits on Benefit Reductions in Group Disability Income Insurance Policies," and contains provisions prohibiting the use of specific types of offset clauses in disability income policies.

Following the adoption of these regulations, the Commissioner has reevaluated the market situation and concluded that this issue is more appropriately regulated through case-by-case enforcement actions, based upon state and federal statutory and common law, brought pursuant to section 790.06 of the Insurance Code against insurers employing illegal offset clauses.

Since the Commissioner has elected to pursue this issue in the manner described, each provision of this article has been determined to be unnecessary and each provision is therefore being repealed.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Repeal of the regulations would not mandate the use of specific technologies or equipment.

IDENTIFICATION OF STUDIES

There are no technical, theoretical, and empirical studies, or similar documents relied upon in proposing the repeal of the regulations.

REASONABLE ALTERNATIVES TO THE REGULATIONS; IMPACT ON SMALL BUSINESS

The Commissioner has identified no reasonable alternatives to the proposed repeal of the regulations, nor have any such alternatives otherwise been identified and brought to the attention of the Department of Insurance, that would carry out the purpose for which the repeal of the regulations is proposed or which would lessen any impact on small business. The proposed repeal of the regulations is not anticipated to affect small business. Although performance standards were considered as an alternative, they were rejected as ineffective in addressing the problems described above involving benefit reductions in group disability income insurance policies.

PRENOTICE DISCUSSIONS

Pursuant to Government Code section 11346.45 the Commissioner has not conducted a prenotice public discussion concerning repeal of the regulations governing disability insurance benefit offset clauses. The proposed repeal does not involve complex proposals or a large number of proposals that cannot easily be reviewed during the comment period.

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